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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID ALLISON BENNETT, WILLIAM W. SMITH, III
and CHARLES D. MENTZER

Appeal 2009-000928
Application 09/684,871
Technology Center 3600

Decided: May 28, 2010

Before, ANTON W. FETTING, JOSEPH A. FISCHETTI and BIBHU R. MOHANTY, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-10 and 15-21. Claims 11-14 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants claim a system and method for computerized parcel shipping management. (Specification 1:20-21)

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A shipping management computer-system, said shipping management computer system comprising at least one computer device, wherein said shipping management computer system is programmed to:

receive from each respective user of a plurality of users, a respective input of a set of parcel specifications for shipping a respective particular parcel, wherein each respective user accesses the shipping management computer system over a global communications network using a respective user client computer device, and wherein each respective user client computer device is adapted for communication with the global communications network;

in response to each respective input, apply a set of carrier-specific shipping location rules for each carrier of a plurality of carriers to a respective default shipping location associated with the respective user and to the set of parcel specifications input by the respective user;

for each carrier of the plurality of carriers, determine whether the carrier would support shipping of the particular parcel according to the respective set of shipping location rules for the carrier as applied to the parcel specifications for the particular parcel and the respective default shipping location associated with the respective user; and

generate a simultaneous online display of a plurality of delivery services for each carrier of the plurality of carriers that would support shipping of the particular parcel from the respective default shipping location.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Nicholls	US 5,485,369	Jan. 16, 1996
Kara	US 6,233,568	May 15, 2001

Williams, Martyn "Internet Update" Newbytes, Feb. 18, 1998, pp. 1-3

The following rejection is before us for review.

The Examiner rejected claims 1-10 and 15-21 under 35 U.S.C. § 103(a) as being unpatentable over Nicholls in view of Kara and InterShipper.

ISSUE

Have Appellants shown that the Examiner erred in rejecting claims 1-10, 15-21 under 35 U.S.C. § 103(a) as being unpatentable over Nicholls in view of Kara and InterShipper on the grounds that a person with ordinary skill in the art would understand that in Nicholls an origin zone must be known in order to calculate a rate for a shipper's operation because without knowledge of a beginning and ending zone, a distance, and hence a shipping fee could not be calculated.

PRINCIPLES OF LAW

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.")

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. Nicholls discloses "the presently preferred embodiment places carrier-related information, such as shipping rates, shipping rules, time in transit information and the like in one or more rate servers. These servers are responsible for making all determinations regarding how a given carrier's rules and rate structures are to be interpreted." (col. 4, ll. 49-54)

2. Nicholls discloses

> [t]he presently preferred embodiment facilitates the

> particular Shipper's requirements, such as order taking, order fulfillment, inventory control and the like, in one or more client applications. These client applications may be customized to conform quite closely to a given shipper's operation. These client applications call upon the necessary rate servers, as needed, for the appropriate shipping rates and shipping requirements of the selected carrier. (col. 4, ll. 54-62)

3. Nicholls discloses

> [m]ultiple shipper accounts are allowed and the desired account may by selected from the Shipper "drop-box." Similarly, the service is selected from the Service box. Alternatively, the service may be set to Best Way and the system will choose the least cost carrier which meets the transit time requirements indicated in the commitment field. (col. 7, ll. 55-61)

4. Nicholls discloses that system has

> … similar objects [to that of the UPS Rate Adjustment program] for each of the carrier rate servers installed on the system, allow the user to adjust the discounts and incentive programs extended to the shipper by the carrier. Existing discounts may be edited, or new incentive programs not yet envisioned by the carrier may typically be created by the user within the flexible structure of this client type. Adjustments may be qualified by destination (either zone, postal code or destination country) and by weight range. (col. 8, ll. 43-52)

5. Nicholls discloses

> … the rate server or servers have registration means for communicating with the supervisory server to invoke the registration services of the supervisory server and thereby establish a connection to the interprocess communication

> means. In the presently preferred embodiment there is one rate server for each carrier (e.g., U.S. Postal Service, Federal Express, United Parcel Service, etc.) and these servers are provided with a complete knowledge base of all rate structure data and shipping rules and regulations pertaining to that carrier. (col. 2, ll. 11-19)

6. Nicholls discloses that

> … rate servers encode the knowledge required to answer questions such as how to calculate shipment rates or how to band shipments. Thus, rate servers provide the knowledge regarding a specific carrier's requirements. Typically, rate servers are provided with specific details regarding a given shipment's weight or the required delivery date by a client application. (col. 5, ll. 34-40)

7. InterShipper discloses that [t]he free service will return every method possible that you can use to ship your package and arrange the results in cost order, and color code the results by approximate transit time. (Page 1, ll. 13-15)

ANALYSIS

We affirm the rejection of claims 1-10, 15-21.

Appellants' arguments against the 35 U.S.C. § 103(a) rejection are based on perceived deficiencies of the Nicholls, Kara and InterShipper. Inasmuch as Appellants raise the same issues with respect to different claims, we discuss them together, addressing each of Appellants' arguments in turn. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. See, 37 C.F.R. § 41.37 (c)(1)(vii) (2004).

Appellants set forth desired interpretations for the terms "shipping location," "default shipping location" and "determine ... according to [a carrier's] shipping location rules." (Appeal Br. 20, 21) However, a review of the Specification at the cited portions shows the context in which the terms are used is not one which establishes explicit definitions, but rather one which presents the terms by way of example only. Notwithstanding, Appellants assert:

> … that the references cited by the Office Action, even when considered in combination, do nothing more than disclose an indication of an identification of delivery services that would support shipping a parcel; they do not disclose, anticipate, teach or suggest consideration of the relevant Carrier's shipping location rules as applied to a particular parcel's specifications and as applied to a particular shipper's shipping location in the manner claimed by the Claims on Appeal. (Appeal Br. 21)

We disagree with Appellants. First, Nicholls discloses servers which are provided with a complete knowledge base of all rate structure data and shipping rules and regulations pertaining to that carrier. (FF 5) Second, Nicholls discloses using rate servers that provide knowledge regarding a specific carrier's requirements, typically, provided with specific details regarding a given *shipment's weight*, e.g., a parcel's specification. (FF 6) Thus, Nicholls discloses shipping rules (rate structure data) taken in conjunction with a particular parcel's specifications (weight) as required by the claim.

We are further not convinced of error by Appellants' argument that Nicholls "mentions only destination zone, not origin zone" and that Nicholls "makes no mention of shipping location, or of applying each carrier's shipping location rules

to the parcel specifications for a particular parcel and a particular shipping location." (Appeal Br. 22) This is because Nicholls: (1) discloses, as found *supra*, shipping rules in the context of parcel specifications for a particular parcel; (2) discloses "client applications may be customized to conform quite closely to a given shipper's operation" and (3) discloses rate servers provided with "a complete knowledge base of all rate structure data and shipping rules and regulations pertaining to that carrier." (FF 2, 5) We thus infer from these points that an origin zone must be known in order to calculate a rate for a shipper's operation because without knowledge of parcel weight, a beginning and ending zone - a shipping distance, a shipping fee could not be calculated. *See KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). (In making the obviousness determination one "can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.")

Appellants next assert that since Nicholls is preprogrammed to observe carrier-specific shipping location rules for a user for which the Nicholls system is installed, Nicholls does not make any determination or identification of each carrier's support for shipping a particular parcel from a particular shipping location according to the respective carrier's shipping location rules. (Appeal Br. 23)

We disagree with Appellants because the independent claims do not foreclose the Nicholls system installed carriers with their attendant shipping rules from being read as the "plurality of carriers" as required by the claims. Similarly, Appellants' argument that Nicholls "is preprogrammed to observe carrier-specific shipping location rules for a user for which a Nicholls system is installed" (Appeal

Br. 23) is likewise not persuasive because, again, nothing in the claims precludes us from reading the preprogrammed installed rules for the user and that specific shipping location as the carrier-specific shipping location rules for a user. Appellants' further attempt to distinguish this point by arguing that a shipping location is distinguishable from the user's preprogrammed zone in Nicholls. (Appeal Br. 25) We disagree with Appellants because for the purpose of calculating shipping rates and rules, the unit of measure for Nicholls is by the zone, where pick-up and drop-off occurs by zone location.

Appellants next argue that InterShipper fails to disclose the claimed step of *generating a simultaneous online display of a plurality of delivery services for each carrier of the plurality of carriers that would support shipping of the particular parcel from the respective default shipping location.* Appellants submit that InterShipper merely describes that the "[t]he free service will return every method possible that you can use to ship your package ...." (Appeal Br. 29) We disagree with Appellants because InterShipper, when read in its entirety, discloses that it arranges "the results in cost order, and color code the results by approximate transit time." (FF7). Thus, a person with ordinary skill in the art would understand that *results* arranged in order and color coded would mean that there is some type of side by side comparison being presented of a plurality of services, otherwise there would be no need for ordering, or even color coding.

Appellants arguments for claims 7 and 21 merely repeat or point out what these claims recite and thus will not be considered an argument for separate patentability of the claim. See, 37 C.F.R. § 41.37 (c)(1)(vii) (2004).

CONCLUSIONS OF LAW

We conclude the Appellants have not shown that the Examiner erred in rejecting claims 1-10 and 15-21 under 35 U.S.C. § 103(a) as being unpatentable over Nicholls in view of Kara and InterShipper.

DECISION

The decision of the Examiner to reject claims 1-10, 15-21 is affirmed.

AFFIRMED

JRG

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